

## **Suppressed DOL-Commissioned Reports In Line With U.S. State Department and International Labor Organization Reports Noting Deficiencies in CAFTA Labor Laws**

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Reports concerning workers rights in Central American countries, which were withheld by the U.S. Department of Labor (DOL) for a year, confirm the existence of a significant number of areas in which the labor laws in the CAFTA countries fail to comply with two of the most basic international norms of common decency and fairness to working people – the rights of association (ILO Convention 87) and to organize and bargain collectively (ILO Convention 98). These reports, generated pursuant to a \$937,923.00 congressionally-appropriated grant awarded to the International Labor Rights Fund, are in line with key findings of the 2004 U.S. State Department *Country Reports on Human Rights Practices*, the October 2003 ILO *Fundamental Principles and Rights at Work: A Labor Law Study* (“the Report”), and other ILO reports released in recent years.

The following list of labor deficiencies, which has been sent to USTR twice, has been updated to reflect the findings of these suppressed reports.

### **COSTA RICA**

- (1) **Use of Solidarity Associations to Bypass Unions.** Costa Rican law allows employers to establish “solidarity associations” and to bargain directly with such associations, even where a union has been established. The failure to explicitly prohibit employers from bypassing unions in favor of employer-based groups violates ILO Convention 98.<sup>1</sup>
  - **This deficiency was confirmed in the October 2003 ILO Report:** “[T]he report of the technical assistance mission...drew attention to the great imbalance in the private sector between the number of collective agreements and the number of direct pacts...the CEACR recalled that direct

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<sup>1</sup>Convention 98 covers the right to organize and bargain collectively. Convention 98 states that unions shall enjoy adequate protection against employer interference, and specifies that “acts which are designed to promote the establishment of workers’ organizations under the domination of employers...shall...constitute acts of interference.”

*negotiation between employers and workers' representatives was envisaged 'only in the absence of trade union organizations.'"<sup>2</sup>*

- ✱ **The Suppressed Report on Costa Rica also confirms this deficiency:**  
*"The strategic goal of solidarismo has historically been to impede the collective defense of workers' interests. For example, the promotion of direct agreements on banana plantations impeded the mechanisms of pressure in each workplace, and inhibited the integration of other plantations and other regions in carrying forward workers' demands. It represented a true manipulation of the union labor movement. ...{T}he legislative initiatives to strengthen this movement are part of the strategy of employers with the objective of subordinating unionism." Pg. 38.*

(2) **Onerous Strike Requirements.** Costa Rican law includes a number of onerous procedural requirements for a strike to be called. These requirements contravene ILO guidelines for regulation of strikes, and taken as a whole, make it nearly impossible for a strike to be called. For example, Costa Rica requires that 60% of all workers in a facility vote in favor of a strike in order for it to be legal. These requirements violate ILO Convention 87.<sup>3</sup>

- **This deficiency was confirmed in the October 2003 ILO Report:** *"The general requirements set out by the legislator [sic] for a strike to be legal...include the requirement that at least 60 per cent of the workers in the enterprise support strike action. The CEACR has stated that if a member State deems it appropriate to establish in its legislation provisions for the requirement of a vote by workers before a strike can be held, 'it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.'"*

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<sup>2</sup>The ILO Report on the five Central American countries is largely based on existing reviews by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR has a very limited scope of review, as it only reviews laws in light of ratified conventions. Therefore, if a country has not ratified one of the core conventions (e.g., El Salvador has not ratified the ILO conventions on the right to associate or bargain collectively), the CEACR will not review the country's implementation of that convention.

<sup>3</sup>ILO convention 87, on freedom of association and the right to organize, covers the right to strike. Specifically, strikes are considered part of the trade union "activities...and programs" protected under Article 3 of that Convention.

The ILO has consistently maintained that if a vote is required for a strike by a union, then: (1) only union votes should be counted in determining whether there is sufficient support for the strike; (2) only a simple majority of workers present and voting should be required for approval; and (3) if a quorum is required for a vote to be called, the quorum should be set at a "reasonable level."

(3) **Inadequate Protection Against Anti-Union Discrimination.** Costa Rica's laws do not provide for swift action against anti-union discrimination. For example, there is no accelerated judicial review for dismissal of union leaders.

- **This deficiency was confirmed in the October 2003 ILO Report:** “[A]s the CEACR has indicated, legislation needs to be amended ‘to expedite judicial proceedings concerning anti-union discrimination and to ensure that the decisions thereby are implemented by effective means.’”

## **EL SALVADOR**

(1) **Inadequate Protection Against Anti-Union Discrimination.** El Salvador fails to provide adequate protection against anti-union discrimination. In particular, El Salvador fails to provide for reinstatement of workers fired because of anti-union discrimination, which violates ILO Convention 98.<sup>4</sup> There also are widespread reports of blacklisting in export processing zones of workers who join unions. Salvadoran law does not prohibit blacklisting, as it bars only anti-union discrimination against employees, not job applicants.

- **The 2004 U.S. State Department Report on Human Rights Practices confirms this deficiency:** “*The Labor Code does not require that employers reinstate illegally dismissed workers... . Workers and the ILO reported instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and the circulation of lists of workers who would not be hired because they had belonged to Unions.*”
- ⚙ **The Suppressed Report on El Salvador also confirms this deficiency:** “*... El Salvador's labor code provides inadequate penalties and remedies when employers are found to engage in anti-union motivated actions. Although firing workers because they are union members is prohibited in El Salvador's labor Code, Human Rights Watch notes... that the penalties for doing so are so low that there is little incentive for employers not to.*”

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<sup>4</sup>Convention 98 on the right to organize and bargain collectively, requires governments to protect workers from anti-union discrimination. The CEACR, in a 1994 General Survey, elaborated on this principle, stating that “legislation which allows the employer in practice to terminate the employee on the condition that he pay compensation...is inadequate under...the Convention.”

*Employers are not required to reinstate workers fired due to union membership, but are rather required to pay 30 days salary for every year worked - a very small price to pay for breaking a union or getting rid of an activist. ” Pg. 8.*

(2) **Restrictive Requirements for Formation of Industrial Unions.** El Salvador has repeatedly been cited by the U.S. State Department and the ILO for using union registration requirements to impede the formation of unions. These formalities violate ILO Convention 87.<sup>5</sup>

- **The 2004 U.S. State Department Report on Human Rights Practices confirms this deficiency:** *“[I]n some cases supported by the ILO Committee on Freedom of Association ... the Government impeded workers from exercising their right of association ... . [T]he government and judges continued to use excessive formalities as a justification to deny applications for legal standing to unions and federations.”*
- **A 1999 Report by the ILO Committee on Freedom of Association confirms this deficiency:** *The Committee observes that “legislation imposes a series of excessive formalities for the recognition of a trade union and the acquisition of legal personality that are contrary to the principle of the free establishment of trade union organizations ... .”*
- ✱ **The Suppressed Report on El Salvador also confirms this deficiency:** *“El Salvador’s Labor Code violates international standards by creating obstacles to union registration, and the government has taken extraordinary steps to prevent unions from registering. Human Rights Watch and the ILO have found that certain provisions of the Salvadoran labor code violate, on their face, principles of freedom of association.” Pg. 11.*

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<sup>5</sup>Convention 87 guarantees the right of workers to establish worker organizations without prior authorization, and states that requirements for union registration should “not be of such a character to restrict the right to organize.” The ILO Committee of Experts has elaborated on this principle, stating that “administrative requirements which are preconditions for the free functioning of an organization should be of a purely formal nature” and not be used to restrict the right to associate or to organize.

## GUATEMALA

- (1) **Inadequate Protection Against Anti-Union Discrimination.** Guatemala's laws do not adequately deter anti-union discrimination. The failure to provide adequate protection from anti-union discrimination violates Convention 98.<sup>6</sup>
- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"An ineffective legal system and inadequate penalties for violations hindered enforcement of the right to form unions and participate in trade union activities...."*
  - **This deficiency was confirmed in the October 2003 ILO Report:** *"[T]he CEACR hopes that ... 'measures will soon be adopted to ensure rapid and effective compliance with judicial decisions ordering the reinstatement in their jobs of workers dismissed for trade union activities and that effective penalties will be established for failure to comply with such decisions.'"*
  - *Note: In August 2004, the Constitutional Court of Guatemala issued a ruling rescinding the authority of the Ministry of Labor to impose fines for labor rights violations. Following this decision, it is not clear whether Guatemala's law permits fines to be assessed for labor law violations.*
- ⚙ **The Suppressed Report on Guatemala also confirms this deficiency:** *"The ILO has observed with concern the high number of allegations relative to dismissals and other acts of anti-union discrimination that affect numerous union leaders, unionists and workers for the exercise of their union activities. The existence of legislation that prohibits acts of discrimination is not sufficient if not accompanied by efficient procedures so that the laws are complied with in practice. It is at least difficult, if not impossible, for a worker to prove that he has been the victim of a measure that constitutes anti-union discrimination. The committee has also emphasized that the absence of penalties against those responsible has brought about impunity that has aggravated the climate of violence which is extremely harmful to the exercise of trade union rights."* Pgs. 10-11

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<sup>6</sup>Convention 98, on the right to organize and bargain collectively, requires governments to protect workers from anti-union discrimination. The CEACR has stated that "the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice."

(2) **Restrictive Requirements for Formation of Industrial Unions.** Guatemala requires a majority of workers in an industry to vote in support of the formation of an industry-wide union for the union to be recognized. This requirement violates Convention 87.<sup>7</sup>

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *The high, industry-wide threshold creates “a nearly insurmountable barrier to the formation of new industry-wide unions.”*

- ✿ **The Suppressed Report on Guatemala also confirms this deficiency:** *“... a highly burdensome requirement is established for the formation of industrial unions – 50% plus one of all workers in the industry.” Pg. 10.*

(3) **Onerous Requirements to Strike.** Guatemalan law includes a number of provisions that interfere with the right to strike. The Guatemalan Labor Code mandates that unions obtain permission from a labor court to strike, even where workers have voted in favor of striking. In addition, the Labor Code requires a majority of a firm’s workers to vote in favor of the strike. These laws violate Convention 87.<sup>8</sup>

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *Noting that “procedural hurdles” helped to make legal strikes rare, the Report states, “The Labor Code requires approval by simple majority of a firm’s workers to call a legal strike. The Labor Code requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike.”*
- **This deficiency was confirmed in the October 2003 ILO Report:** *“[O]ne of the general requirements laid down in the legislation ... is still under criticism by the CEACR: ‘only the votes cast should be counted in*

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<sup>7</sup>Convention 87 states that “workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing.” The CEACR has determined that while numerical thresholds for establishment of a union are not *per se* incompatible with Convention 87, “the numbers should be fixed in a reasonable manner so that the establishment of organizations is not hindered.”

<sup>8</sup>As discussed in note 3, strikes are considered part of the trade union “activities... and programs” protected under Article 3 of Convention 87. The CEACR has consistently maintained that if a vote is required for a union-called strike, that the support of a simple majority of union members present should suffice.

*calculating the majority and ... the quorum should be set at a reasonable level.”*

- ✱ **The Suppressed Report on Guatemala also confirms this deficiency:**  
*“ ... Article 241 of the Labor Code requires 50 per cent plus one of those working in the enterprise (without including in the total workers in positions of confidence or who represent the employer) to call a strike.”*  
Pg. 10.

- (4) **Ambiguity in Certain Criminal Penalties.** Guatemala’s Penal Code provides for criminal penalties against anyone who disrupts the operation of enterprises that contribute to the economic development of the country. Whether and how these penalties apply to workers engaged in a lawful strike is unclear, and this ambiguity has deterred workers from exercising their right to strike. The CEACR has stated that application of these penalties to a worker who engaged in a lawful strike would violate ILO Conventions 87 and 98.<sup>9</sup>
  - **This deficiency was confirmed in the October 2003 ILO Report:** *“The CEACR has drawn the attention of the Government to the fact that certain provisions of the Penal Code are not compatible with ILO Conventions ...noting that ... sentences of imprisonment ... can be imposed as a punishment ... for participation in a strike.”*
- (5) **Restrictions on Union Leadership.** Guatemala maintains a number of restrictions with respect to union leadership including: (1) restricting leadership positions to Guatemalan nationals; and (2) requiring that union leaders be currently employed in the occupation represented by the union. These restrictions violate Convention 87.<sup>10</sup>

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<sup>9</sup>Convention 87 establishes the right to strike as a key element of the right to freedom of association and the right to organize. The CEACR has cautioned that penalties against workers for strikes should not be used to deter lawful union activities.

The CEACR has elaborated on the problems that arise when penalties are imposed on workers for strikes, stating that, ‘[t]he Committee considers that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, both excessive recourse to the courts in labor relations and the existence of heavy sanctions for strike action may well create more problems than they resolve.’

<sup>10</sup>Under Convention 87, on the right to associate and organize, governments are supposed to ensure the free functioning of workers’ organizations, including by ensuring that workers have the right to elect their representatives in “full freedom.” The CEACR has criticized both nationality and employment requirements as impediments to the

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- **This deficiency was confirmed in the October 2003 ILO Report:** *“Both the Constitution and the Labour Code prohibit foreign nationals from holding office in a trade union.... The Labour Code requires officials to be workers in the enterprise... . These restrictions have given rise to observations by the CEACR.”*
- ⚙ **The Suppressed Report on Guatemala also confirms this deficiency:** *“Under Article 220 of the Labor Code, only persons of Guatemalan origin can constitute or be members of a union and its executive committee.”* Pg. 9.

## HONDURAS

- (1) **Burdensome Requirements for Union Recognition.** Honduran law requires more than 30 workers to form a trade union. This numerical requirement acts as a bar to the establishment of unions in small firms, and violates ILO Convention 87.<sup>11</sup>
  - **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *“The [ILO] has noted that various provisions in the labor law restrict freedom of association, including ... the requirement of more than 30 workers to constitute a trade union... .”*
  - **This deficiency was confirmed in the October 2003 ILO Report:** *“[T]he requirement to have more than 30 workers to constitute a trade union ... has prompted the CEACR to comment that this number is ‘not conducive to the formation of trade unions in small, and medium size enterprises.’”*
  - ⚙ **The Suppressed Report on Honduras also confirms this deficiency:** *“[T]he requirement to have more than 30 workers to constitute a trade union ... has prompted the CEACR to comment that this number ‘is not*

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<sup>10</sup>(...continued)

ability of workers to elect representatives of their own choosing. (Nationality requirements preclude the formation of unions in sectors dominated by migrant labor; employment requirements create incentives for employers to fire union leaders.)

<sup>11</sup>Convention 87 states that “workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing.” The CEACR has determined that while numerical thresholds for establishment of a union are not *per se* incompatible with Convention 87, “the numbers should be fixed in a reasonable manner so that the establishment of organizations is not hindered.”



*conducive to the formation of trade unions in small and medium-sized enterprises'. In many cases, the employers divide a given company into various companies, so that none of the companies have more than thirty workers, making it impossible for workers to legally organize." Pg. 13.*

(2) **Limitations on the Number of Unions.** Honduran law prohibits the formation of more than one trade union in a single enterprise. This restriction violates ILO Convention 87 on the right of workers to join or establish organizations of their own choosing, and fosters the creation of monopoly unions.<sup>12</sup>

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The [ILO] has noted that various provisions in the labor law restrict freedom of association, including the prohibition of more than 1 trade union in a single enterprise... ."*
- **This deficiency was confirmed in the October 2003 ILO Report:** *"Such a provision, in the view of the CEACR, is contrary to Article 2 of Convention No. 87, since the law should not institutionalize a de facto monopoly ... ."*
- ⚙ **The Suppressed Report on Honduras also confirms this deficiency:** *"Honduran legislation establishes that two or more unions cannot coexist within the same company, institution, or establishment... . Because of the restriction of one representative per workplace, a union cannot compete with a solidarity association if the association is the first to be established."* Pg. 14.

(3) **Restrictions on Union Leadership.** Honduras requires that union leaders be Honduran nationals, and be employed in the occupation that the union represents. These restrictions violate ILO Convention 87.<sup>13</sup>

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<sup>12</sup>Convention 87 protects the right of workers to establish and join "organizations of their own choosing." Restricting the number of unions to one per enterprise interferes with that right.

<sup>13</sup>Under Convention 87, governments are supposed to ensure the free functioning of workers' organizations, including by ensuring that workers have the right to elect their representatives in "full freedom." The CEACR has criticized both nationality and employment requirements as impediments to the ability of workers to elect representatives of their own choosing. (Nationality requirements preclude the formation of unions in sectors dominated by migrant labor; employment requirements create incentives for employers to fire union leaders.)

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *“The [ILO] has noted that various provisions in the labor law restrict freedom of association, including ...the prohibition on foreign nationals holding union office, the requirement that union officials must be employed in the economic activity of the business the union represents... .”*
  - **This deficiency was confirmed in the October 2003 ILO Report:** *“The Labour Code prohibits foreign nationals from holding trade union offices and requires officials to be engaged in the activity, profession or trade characteristic of the trade union ... . The CEACR has objected to these provisions, which it deems incompatible with Article 3 of Convention No. 87 ... .”*
  - ⚙ **The Suppressed Report on Honduras also confirms this deficiency:** *“Honduras has a legal clause ... that limits the percentage of non-national workers that can be affiliated to the union. It establishes that 90% of the affiliates must be Honduran workers... . The Labor Code also requires that the officers of a trade union be Honduran.” Pg. 14.*
- (4) **Inadequate Protection Against Anti-Union Discrimination.** The CEACR has faulted Honduras for a number of years for not providing adequate sanctions for anti-union discrimination. For example, under the law, only a very small fine of approximately \$12-\$600 can be assessed against employers for interfering with the right of association. This Honduran law violates ILO Convention 98.<sup>14</sup>
- **This deficiency was confirmed by a 2004 Report of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR):** *“The penalties envisaged ... against persons impairing the right to freedom of association (from 200 to 2,000 lempiras, with 200 lempiras being equivalent to around \$12) had been deemed inadequate by one worker’s confederation... . The Committee once again hopes that [legislation will be prepared] providing for sufficiently effective and dissuasive sanctions against all acts of anti-union discrimination.”*

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<sup>14</sup>Article 1 of Convention 98 states that “Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.” The CEACR has stated that the test of whether or not the legal procedures meet the requirements of the Convention is that the “procedures prevent or effectively redress anti-union discrimination, and allow union representatives to be reinstated in their posts and continue to hold their trade union office according to their constituents’ wishes.”

- ⚙ **The Suppressed Report on Honduras also confirms this deficiency:**  
*“When the employer act {sic} contrary to this protection, [against discrimination] the law establishes a sanction equivalent to 6 months’ salary of the worker... . However the penalty is not adequate if the reinstatement depends on the worker going through the normal process [summoning the employer to labor court]... . The ILO has reiterated that the government must provide for adequate protection, particularly effective and dissuasive sanctions, against acts of anti-union discrimination for trade union membership or activities and against acts of interference by employers or their organization in trade union activities.” Pg. 15.*

(5) **Few Protections Against Employer Interference in Union Activities.** Honduras prohibits employers or employees with ties to management from joining a union; it does not, however, prohibit employers from interfering in union activities through financial or other means. The failure to preclude employer involvement violates ILO Convention 98 on the right to organize and bargain collectively.<sup>15</sup>

- **This deficiency was confirmed in a 2004 Report of the ILO CEACR:**  
*“[T]he Convention provides for broader protection for workers’ ... organizations against any acts of interference ... in particular, acts which are designed to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations, or to support workers’ organizations by financial or other means, with the object of placing such organizations under the control of employers or employers’ organizations. In this respect, the Committee once again hopes that [labor law reform will include provisions] designed to ... afford full and adequate protection against any acts of interference, as well as sufficiently effective and dissuasive sanctions against such acts.”*

- ⚙ **The Suppressed Report on Honduras also confirms this deficiency:** *“A number of private companies have instituted ‘solidarity’ associations, essentially aimed at providing credit and other services to workers and managers who are members of these associations. Organized labor criticize these associations because they do not permit strikes; have*

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<sup>15</sup>Convention 98 states that “workers’ and employers’ organizations shall enjoy adequate protection against any acts of interference by each other.” In particular, Convention 98 prohibits employers’ acts to “support workers’ organizations by financial or other means, with the object of placing such organizations under the control of employers... .”

*inadequate grievance procedures; are meant to displace genuine, independent trade unions; and are employer-dominated.” Pg. 5.*

- (6) **Restrictions on Federations.** Honduras prohibits federations from calling strikes. The CEACR has criticized this prohibition, which contravenes the right to organize.<sup>16</sup>

- **This deficiency was confirmed in the October 2003 ILO Report:**  
*“Federations and confederations do not have a recognized right to strike ... which has prompted the CEACR to recall that such provisions are contrary to Articles 3, 5 and 6 of Convention No. 87... .”*
- ⚙ **The Suppressed Report on Honduras also confirms this deficiency:**  
*“Article 573 of the Labor Code bans strikes called by federations or confederations, thus limiting all strikes to the enterprise level.” Pg. 16.*

- (7) **Onerous Strike Requirements.** Honduras requires that two-thirds of union members must support a strike for it to be legal. This requirement violates ILO Convention 87.<sup>17</sup>

- **This deficiency was confirmed in the October 2003 ILO Report:** *“[T]he CEACR has recalled that restrictions on the right to strike should not be such as to make it impossible to call a strike in practice, and that a simple majority of voters calculated on the basis of the workers present at the assembly should be sufficient to be able to call a strike.”*
- ⚙ **The Suppressed Report on Honduras also confirms this deficiency:** *“In Honduras ... the labor code is particularly deficient with regard to the right to strike, and has indeed been criticized by the ILO for many years. In general, the law requires at least 2/3 of the workers in the enterprise support the strike, and if a union calls the strike, at least half of the workers in the enterprise must be affiliated to the union. (Art. 553).” Pg. 15.*

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<sup>16</sup>Convention 87 gives federations and confederations the same rights to “organize their activities, and to formulate programs” as unions. The right to strike is considered a worker organization “activity,” therefore, federations should have this right.

<sup>17</sup>As discussed in note 3, strikes are considered part of the trade union “activities... and programs” protected under Article 3 of Convention 87. The CEACR has consistently maintained that if a vote is required for a union-called strike, that the support of a simple majority of union members present should suffice.

## NICARAGUA

- (1) **Inadequate Protection Against Anti-Union Discrimination.** Nicaragua's laws permit employers to fire employees who are attempting to organize a union as long as they provide double the normal severance pay. This allowance violates ILO Convention 98.<sup>18</sup>

- **This deficiency was confirmed in the October 2003 ILO Report:** *The Annex to the Report states that the Labor Code provides that "if the employer does not carry out reinstatement, he/she shall pay double the compensation according to the length of service."*
- ✿ **The Suppressed Report on Nicaragua also confirms this deficiency:** *"[T]he new Labor Code of 1997 lists fines as the only possible penalty [including for anti-union discrimination] ... . Similarly, there is no provision in the new Code penalizing with arrest an employer's refusal to reinstate a worker when the courts have made a final decision in favor of the reinstatement."* Pg. 59.

- (2) **Use of Solidarity Associations to Bypass Unions.** Nicaragua allows employers to create "solidarity associations" but does not specify how those associations relate to unions. The failure to include protections against employers using solidarity associations to interfere with union activities violates ILO Convention 98.<sup>19</sup>

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The Labor Code recognizes cooperatives into which many transportation and agricultural workers are organized. Representatives of most organized labor groups criticized these cooperatives and assert that they do not permit strikes, have inadequate*

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<sup>18</sup>Article 1 of Convention 98 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." The CEACR has stated that legislation which allows the employer to terminate the employment of a worker on condition that he pays compensation is inadequate under the terms of the Convention.

<sup>19</sup>Convention 98 covers the right to organize and bargain collectively. Convention 98 states that unions shall enjoy adequate protection against employer interference, and specifies that "acts which are designed to promote the establishment of workers' organizations under the domination of employers ... shall ... constitute acts of interference."

*grievance procedures, are meant to displace genuine, independent trade unions and are dominated by employers."*

- ✱ **The Suppressed Report on Nicaragua also confirms this deficiency:**  
*"On the part of employers the following unfair practices, among others, have been observed: ... c) parallel trade unions (yellow unions) are formed, to resist the independent unions's actions; d) the exercise of collective bargaining is limited, through conspiracy with the parallel trade union... ."*  
Pg. 6.

- (3) **Procedural Impediments to Calling a Strike.** Nicaragua maintains a number of restrictive procedural requirements for calling strikes. (According to the 2002 U.S. State Department Human Rights Report, the Nicaraguan Labor Ministry asserts that it would take approximately 6 months for a union to go through the entire process to be permitted to have a legal strike.) Since all legal protections may be withdrawn in the case of an illegal strike, the practical outcome is that workers who strike often lose their jobs, thus undermining the right to strike protected by Convention 87.

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"Observers contend that the [process for calling a strike] is inappropriately lengthy and so complex that there have been few legal strikes since the 1996 Labor Code came into effect... ."*

- ✱ **The Suppressed Report on Nicaragua also confirms this deficiency:**  
*"Only one strike has been declared legal since 1996; the Labor Ministry admits that it would take 6 months for a union to go through the strike legalization process. Protection against retribution may be withdrawn in the case of an illegal strike."* Fact Sheet at 3.